



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

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July 7, 2008

The Honorable Tim Bee
President
Arizona State Senate
1700 West Washington
Phoenix, AZ 85007

Re: Senate Bill 1484; Prime Contracting Deduction; University Improvements

Dear President Bee:

Today I vetoed Senate Bill 1484, a bill that proposed to divert the State's share of certain transaction privilege tax revenues and transfer them to any city that expended monies to provide infrastructure necessitated by the construction of privately funded university buildings.

Senate Bill 1484 is unfair; it only benefits cities that have state universities. Yet these cities already benefit greatly from a university's presence. An extra tax "dividend" goes too far.

In addition, if this special tax treatment is afforded to universities, other worthy organizations (community colleges, public hospitals, etc.) would be justified in making the same request of the general fund, further limiting the State's abilities to fund its priorities. These priorities include, obviously, the funding for the universities themselves.

For these and other reasons, I have vetoed Senate Bill 1484.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Janet Napolitano", followed by a long horizontal line extending to the right.

Janet Napolitano
Governor

cc: The Honorable Jim Weiers
The Honorable Thayer Verschoor

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1484

AN ACT

AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 351, SECTION 7 AND CHAPTER 354, SECTION 27; REPEALING SECTION 42-5029, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 276, SECTION 1; AMENDING TITLE 42, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5032.02; AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED REPEAL OF SECTION 42-5032.02, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5029, Arizona Revised Statutes, as amended by
3 Laws 2006, chapter 351, section 7 and chapter 354, section 27, is amended to
4 read:

5 42-5029. Remission and distribution of monies; definition

6 A. The department shall deposit, pursuant to sections 35-146 and
7 35-147, all revenues collected under this article and articles 4, 5 and 8 of
8 this chapter pursuant to section 42-1116, separately accounting for:

9 1. Payments of estimated tax under section 42-5014, subsection D.
10 2. Revenues collected pursuant to section 42-5070.
11 3. Revenues collected under this article and article 5 of this chapter
12 from and after June 30, 2000 from sources located on Indian reservations in
13 this state.

14 4. Revenues collected pursuant to section 42-5010, subsection G and
15 section 42-5155, subsection D.

16 B. The department shall credit payments of estimated tax to an
17 estimated tax clearing account and each month shall transfer all monies in
18 the estimated tax clearing account to a fund designated as the transaction
19 privilege and severance tax clearing account. The department shall credit
20 all other payments to the transaction privilege and severance tax clearing
21 account, separately accounting for the monies designated as distribution base
22 under sections 42-5010, 42-5164, 42-5205 and 42-5353. Each month the
23 department shall report to the state treasurer the amount of monies collected
24 pursuant to this article and articles 4, 5 and 8 of this chapter.

25 C. On notification by the department, the state treasurer shall
26 distribute the monies deposited in the transaction privilege and severance
27 tax clearing account in the manner prescribed by this section and by sections
28 42-5164, 42-5205 and 42-5353, after deducting warrants drawn against the
29 account pursuant to sections 42-1118 and 42-1254.

30 D. Of the monies designated as distribution base the department shall:
31 1. Pay twenty-five per cent to the various incorporated municipalities
32 in this state in proportion to their population to be used by the
33 municipalities for any municipal purpose.

34 2. Pay 38.08 per cent to the counties in this state by averaging the
35 following proportions:

36 (a) The proportion that the population of each county bears to the
37 total state population.

38 (b) The proportion that the distribution base monies collected during
39 the calendar month in each county under this article, section 42-5164,
40 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
41 total distribution base monies collected under this article, section 42-5164,
42 subsection B, section 42-5205, subsection B and section 42-5353 throughout
43 the state for the calendar month.

1 3. Pay an additional 2.43 per cent to the counties in this state as
2 follows:

3 (a) Average the following proportions:

4 (i) The proportion that the assessed valuation used to determine
5 secondary property taxes of each county, after deducting that part of the
6 assessed valuation that is exempt from taxation at the beginning of the month
7 for which the amount is to be paid, bears to the total assessed valuations
8 used to determine secondary property taxes of all the counties after
9 deducting that portion of the assessed valuations that is exempt from
10 taxation at the beginning of the month for which the amount is to be paid.
11 Property of a city or town that is not within or contiguous to the municipal
12 corporate boundaries and from which water is or may be withdrawn or diverted
13 and transported for use on other property is considered to be taxable
14 property in the county for purposes of determining assessed valuation in the
15 county under this item.

16 (ii) The proportion that the distribution base monies collected during
17 the calendar month in each county under this article, section 42-5164,
18 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
19 total distribution base monies collected under this article, section 42-5164,
20 subsection B, section 42-5205, subsection B and section 42-5353 throughout
21 the state for the calendar month.

22 (b) If the proportion computed under subdivision (a) of this paragraph
23 for any county is greater than the proportion computed under paragraph 2 of
24 this subsection, the department shall compute the difference between the
25 amount distributed to that county under paragraph 2 of this subsection and
26 the amount that would have been distributed under paragraph 2 of this
27 subsection using the proportion computed under subdivision (a) of this
28 paragraph and shall pay that difference to the county from the amount
29 available for distribution under this paragraph. Any monies remaining after
30 all payments under this subdivision shall be distributed among the counties
31 according to the proportions computed under paragraph 2 of this subsection.

32 4. After any distributions required by sections 42-5030, 42-5030.01,
33 42-5031, 42-5032, and 42-5032.01 AND 42-5032.02, and after making any
34 transfer to the water quality assurance revolving fund as required by section
35 49-282, subsection B, credit the remainder of the monies designated as
36 distribution base to the state general fund. From this amount:

37 (a) The legislature shall annually appropriate to:

38 (i) The department of revenue sufficient monies to administer and
39 enforce this article and articles 5 and 8 of this chapter.

40 (ii) The department of economic security monies to be used for the
41 purposes stated in title 46, chapter 1.

42 (iii) The firearms safety and ranges fund established by section
43 17-273, fifty thousand dollars derived from the taxes collected from the
44 retail classification pursuant to section 42-5061 for the current fiscal
45 year.

1 (b) The state treasurer shall transfer to the tourism fund an amount
2 equal to the sum of the following:

3 (i) Three and one-half per cent of the gross revenues derived from the
4 transient lodging classification pursuant to section 42-5070 during the
5 preceding fiscal year.

6 (ii) Three per cent of the gross revenues derived from the amusement
7 classification pursuant to section 42-5073 during the preceding fiscal year.

8 (iii) Two per cent of the gross revenues derived from the restaurant
9 classification pursuant to section 42-5074 during the preceding fiscal year.

10 E. If approved by the qualified electors voting at a statewide general
11 election, all monies collected pursuant to section 42-5010, subsection G and
12 section 42-5155, subsection D shall be distributed each fiscal year pursuant
13 to this subsection. The monies distributed pursuant to this subsection are
14 in addition to any other appropriation, transfer or other allocation of
15 public or private monies from any other source and shall not supplant,
16 replace or cause a reduction in other school district, charter school,
17 university or community college funding sources. The monies shall be
18 distributed as follows:

19 1. If there are outstanding state school facilities revenue bonds
20 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the
21 amount that is necessary to pay the fiscal year's debt service on outstanding
22 state school improvement revenue bonds for the current fiscal year shall be
23 transferred each month to the school improvement revenue bond debt service
24 fund established by section 15-2084. The total amount of bonds for which
25 these monies may be allocated for the payment of debt service shall not
26 exceed a principal amount of eight hundred million dollars exclusive of
27 refunding bonds and other refinancing obligations.

28 2. After any transfer of monies pursuant to paragraph 1 of this
29 subsection, twelve per cent of the remaining monies collected during the
30 preceding month shall be transferred to the technology and research
31 initiative fund established by section 15-1648 to be distributed among the
32 universities for the purpose of investment in technology and research-based
33 initiatives.

34 3. After the transfer of monies pursuant to paragraph 1 of this
35 subsection, three per cent of the remaining monies collected during the
36 preceding month shall be transferred to the workforce development account
37 established in each community college district pursuant to section 15-1472
38 for the purpose of investment in workforce development programs.

39 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
40 subsection, one-twelfth of the amount a community college that is owned,
41 operated or chartered by a qualifying Indian tribe on its own Indian
42 reservation would receive pursuant to section 15-1472, subsection D,
43 paragraph 2 if it were a community college district shall be distributed each
44 month to the treasurer or other designated depository of a qualifying Indian
45 tribe. Monies distributed pursuant to this paragraph are for the exclusive

1 purpose of providing support to one or more community colleges owned,
2 operated or chartered by a qualifying Indian tribe and shall be used in a
3 manner consistent with section 15-1472, subsection B. For purposes of this
4 paragraph, "qualifying Indian tribe" has the same meaning as defined in
5 section 42-5031.01, subsection D.

6 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
7 subsection, one-twelfth of the following amounts shall be transferred each
8 month to the department of education for the increased cost of basic state
9 aid under section 15-971 due to added school days and associated teacher
10 salary increases enacted in 2000:

11 (a) In fiscal year 2001-2002, \$15,305,900.

12 (b) In fiscal year 2002-2003, \$31,530,100.

13 (c) In fiscal year 2003-2004, \$48,727,700.

14 (d) In fiscal year 2004-2005, \$66,957,200.

15 (e) In fiscal year 2005-2006 and each fiscal year thereafter,
16 \$86,280,500.

17 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
18 subsection, seven million eight hundred thousand dollars is appropriated each
19 fiscal year, to be paid in monthly installments, to the department of
20 education to be used for school safety as provided in section 15-154 and two
21 hundred thousand dollars is appropriated each fiscal year, to be paid in
22 monthly installments to the department of education to be used for the
23 character education matching grant program as provided in section 15-154.01.

24 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
25 subsection, no more than seven million dollars may be appropriated by the
26 legislature each fiscal year to the department of education to be used for
27 accountability purposes as described in section 15-241 and title 15, chapter
28 9, article 8.

29 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
30 subsection, one million five hundred thousand dollars is appropriated each
31 fiscal year, to be paid in monthly installments, to the failing schools
32 tutoring fund established by section 15-241.

33 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
34 subsection, twenty-five million dollars shall be transferred each fiscal year
35 to the state general fund to reimburse the general fund for the cost of the
36 income tax credit allowed by section 43-1072.01.

37 10. After the payment of monies pursuant to paragraphs 1 through 9 of
38 this subsection, the remaining monies collected during the preceding month
39 shall be transferred to the classroom site fund established by section
40 15-977. The monies shall be allocated as follows in the manner prescribed by
41 section 15-977:

42 (a) Forty per cent shall be allocated for teacher compensation based
43 on performance.

44 (b) Twenty per cent shall be allocated for increases in teacher base
45 compensation and employee related expenses.

1 (c) Forty per cent shall be allocated for maintenance and operation
2 purposes.

3 F. The department shall credit the remainder of the monies in the
4 transaction privilege and severance tax clearing account to the state general
5 fund, subject to any distribution required by section 42-5030.01.

6 G. Notwithstanding subsection D of this section, if a court of
7 competent jurisdiction finally determines that tax monies distributed under
8 this section were illegally collected under this article or articles 5 and 8
9 of this chapter and orders the monies to be refunded to the taxpayer, the
10 department shall compute the amount of such monies that was distributed to
11 each city, town and county under this section. The department shall notify
12 the state treasurer of that amount plus the proportionate share of additional
13 allocated costs required to be paid to the taxpayer. Each city's, town's and
14 county's proportionate share of the costs shall be based on the amount of the
15 original tax payment each municipality and county received. Each month the
16 state treasurer shall reduce the amount otherwise distributable to the city,
17 town and county under this section by one thirty-sixth of the total amount to
18 be recovered from the city, town or county until the total amount has been
19 recovered, but the monthly reduction for any city, town or county shall not
20 exceed ten per cent of the full monthly distribution to that entity. The
21 reduction shall begin for the first calendar month after the final
22 disposition of the case and shall continue until the total amount, including
23 interest and costs, has been recovered.

24 H. On receiving a certificate of default from the greater Arizona
25 development authority pursuant to section 41-1554.06 or 41-1554.07 and to the
26 extent not otherwise expressly prohibited by law, the state treasurer shall
27 withhold from the next succeeding distribution of monies pursuant to this
28 section due to the defaulting political subdivision the amount specified in
29 the certificate of default and immediately deposit the amount withheld in the
30 greater Arizona development authority revolving fund. The state treasurer
31 shall continue to withhold and deposit the monies until the greater Arizona
32 development authority certifies to the state treasurer that the default has
33 been cured. In no event may the state treasurer withhold any amount that the
34 defaulting political subdivision certifies to the state treasurer and the
35 authority as being necessary to make any required deposits then due for the
36 payment of principal and interest on bonds of the political subdivision that
37 were issued before the date of the loan repayment agreement or bonds and that
38 have been secured by a pledge of distributions made pursuant to this section.

39 I. Except as provided by sections 42-5033 and 42-5033.01, the
40 population of a county, city or town as determined by the most recent United
41 States decennial census plus any revisions to the decennial census certified
42 by the United States bureau of the census shall be used as the basis for
43 apportioning monies pursuant to subsection D of this section.

1 J. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION, ON NOTICE FROM THE
2 DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-6010, SUBSECTION B, THE STATE
3 TREASURER SHALL WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO THIS
4 SECTION TO THE AFFECTED CITY OR TOWN THE AMOUNT OF THE PENALTY FOR BUSINESS
5 LOCATION MUNICIPAL TAX INCENTIVES PROVIDED BY THE CITY OR TOWN TO A BUSINESS
6 ENTITY THAT LOCATES A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN. THE
7 STATE TREASURER SHALL CONTINUE TO WITHHOLD MONIES PURSUANT TO THIS SUBSECTION
8 UNTIL THE ENTIRE AMOUNT OF THE PENALTY HAS BEEN WITHHELD. THE STATE
9 TREASURER SHALL CREDIT ANY MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE
10 STATE GENERAL FUND AS PROVIDED BY SUBSECTION D, PARAGRAPH 4 OF THIS SECTION.
11 THE STATE TREASURER SHALL NOT WITHHOLD ANY AMOUNT THAT THE CITY OR TOWN
12 CERTIFIES TO THE DEPARTMENT OF REVENUE AND THE STATE TREASURER AS BEING
13 NECESSARY TO MAKE ANY REQUIRED DEPOSITS OR PAYMENTS FOR DEBT SERVICE ON BONDS
14 OR OTHER LONG-TERM OBLIGATIONS OF THE CITY OR TOWN THAT WERE ISSUED OR
15 INCURRED BEFORE THE LOCATION INCENTIVES PROVIDED BY THE CITY OR TOWN.

16 ~~J.~~ K. For the purposes of this section, "community college district"
17 means a community college district that is established pursuant to sections
18 15-1402 and 15-1403 and that is a political subdivision of this state.

19 Sec. 2. Repeal

20 Section 42-5029, Arizona Revised Statutes, as amended by Laws 2007,
21 chapter 276, section 1, is repealed.

22 Sec. 3. Title 42, chapter 5, article 1, Arizona Revised Statutes, is
23 amended by adding section 42-5032.02, to read:

24 42-5032.02. Distribution of revenues for city or town
25 infrastructure improvements related to state
26 university construction; definitions

27 A. EACH MONTH THE STATE TREASURER SHALL PAY A CITY OR TOWN, FROM THE
28 AMOUNT DESIGNATED AS DISTRIBUTION BASE PURSUANT TO SECTION 42-5029,
29 SUBSECTION D, PARAGRAPH 4, THE AMOUNT DETERMINED UNDER SUBSECTION B OF THIS
30 SECTION FOR THE PURPOSE OF FUNDING UP TO EIGHTY PER CENT OF THE COST OF
31 INFRASTRUCTURE IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF
32 BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS
33 UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS. A CITY OR TOWN IS
34 ONLY ELIGIBLE FOR FUNDING PURSUANT TO THIS SECTION IF AND TO THE EXTENT THAT
35 THE CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF
36 A UNIVERSITY THAT IS UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS
37 IS NOT FUNDED FROM STATE FUNDS, FUNDS SUPPLIED BY A POLITICAL SUBDIVISION OF
38 THIS STATE, FUNDS GUARANTEED BY THIS STATE OR FUNDS GUARANTEED BY A POLITICAL
39 SUBDIVISION OF THIS STATE.

40 B. THE AMOUNT TO BE PAID TO A CITY OR TOWN UNDER SUBSECTION A OF THIS
41 SECTION IS THE TOTAL AMOUNT OF STATE TRANSACTION PRIVILEGE TAX REVENUES
42 COLLECTED UNDER SECTION 42-5010, SUBSECTION A FROM PERSONS CONDUCTING
43 BUSINESS UNDER SECTION 42-5075 DERIVED FROM CONTRACTS TO CONSTRUCT BUILDINGS
44 AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE
45 JURISDICTION OF THE ARIZONA BOARD OF REGENTS. IF STATE MONIES ARE USED TO

1 FULLY OR PARTIALLY FUND THE CONSTRUCTION OF BUILDINGS AND ASSOCIATED
2 IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY UNDER THE JURISDICTION OF THE
3 ARIZONA BOARD OF REGENTS, THE TRANSACTION PRIVILEGE TAX REVENUES ATTRIBUTABLE
4 TO PAYMENTS MADE FROM STATE MONIES SHALL NOT BE INCLUDED WHEN CALCULATING THE
5 AMOUNT TO BE PAID UNDER THIS SECTION.

6 C. BEFORE THE COMMENCEMENT OF THE CONSTRUCTION OF BUILDINGS AND
7 ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY UNDER THE
8 JURISDICTION OF THE ARIZONA BOARD OF REGENTS THAT WILL REQUIRE A CITY OR TOWN
9 TO MAKE INFRASTRUCTURE IMPROVEMENTS, THE CITY OR TOWN SHALL ENTER INTO A
10 WRITTEN AGREEMENT WITH THE DEPARTMENT. THIS AGREEMENT AND ANY AMENDMENTS OR
11 CHANGES TO THE AGREEMENT SHALL:

12 1. STATE THAT THE MONIES RECEIVED UNDER THIS SECTION WILL BE USED
13 EXCLUSIVELY TO PAY FOR INFRASTRUCTURE IMPROVEMENTS THAT RELATE DIRECTLY TO
14 THE CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF
15 A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

16 2. STATE THAT THE CITY OR TOWN WILL PAY A MINIMUM OF TWENTY PER CENT
17 OF THE COST OF THE INFRASTRUCTURE IMPROVEMENTS WITH ITS OWN MONIES.

18 3. STATE THAT THE CITY OR TOWN WILL IMMEDIATELY NOTIFY THE DEPARTMENT
19 WHEN MONIES RECEIVED UNDER THIS SECTION EXCEED EIGHTY PER CENT OF THE COST OF
20 THE INFRASTRUCTURE IMPROVEMENTS AND WILL RETURN THE AMOUNT OF THE EXCESS TO
21 THE STATE TREASURER FOR DEPOSIT TO THE STATE GENERAL FUND.

22 4. STIPULATE THE ACTUAL AMOUNT OF THE CONSTRUCTION FUNDING THAT WILL
23 BE DERIVED FROM SOURCES OTHER THAN THE STATE.

24 5. IDENTIFY THE PERSONS WHO WILL BE PRIME CONTRACTORS ON THE
25 CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A
26 UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS AND STATE
27 THAT EACH PRIME CONTRACTOR HAS BEEN NOTIFIED AS TO WHICH PORTION OF THE
28 CONTRACTOR'S INCOME SHALL BE SEPARATELY IDENTIFIED TO THE DEPARTMENT PURSUANT
29 TO SECTION 42-5075, SUBSECTION H.

30 6. PROVIDE ANY OTHER INFORMATION DEEMED NECESSARY BY THE DEPARTMENT.

31 7. STIPULATE THAT IF THE FUNDING OF THE CONSTRUCTION OF BUILDINGS AND
32 ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY UNDER THE
33 JURISDICTION OF THE ARIZONA BOARD OF REGENTS INCLUDES STATE FUNDS, THE CITY
34 OR TOWN SHALL RECEIVE MONIES UNDER THIS SECTION FOR THE COST OF THE
35 INFRASTRUCTURE IMPROVEMENTS IN A MANNER THAT IS PROPORTIONAL TO THE AMOUNT OF
36 NONSTATE FUNDS AS A PERCENTAGE OF TOTAL FUNDING.

37 D. ON NOTIFICATION FROM A CITY OR TOWN THAT MONIES RECEIVED UNDER THIS
38 SECTION HAVE MET OR EXCEEDED EIGHTY PER CENT OF THE COST OF THE
39 INFRASTRUCTURE IMPROVEMENTS RELATED TO THE SPECIFIC CONSTRUCTION OF BUILDINGS
40 AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY UNDER THE
41 JURISDICTION OF THE ARIZONA BOARD OF REGENTS, THE DEPARTMENT SHALL CEASE
42 PAYMENTS UNDER SUBSECTION A OF THIS SECTION RELATED TO THIS PROJECT.

E. FOR THE PURPOSES OF THIS SECTION:

1. "BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF THE UNIVERSITY" MEANS ANY BUILDING AND ASSOCIATED IMPROVEMENTS IF THE UNIVERSITY UTILIZES AT LEAST EIGHTY PER CENT OF THE BUILDING AND ASSOCIATED IMPROVEMENTS FOR ACADEMIC PURPOSES.

2. "INFRASTRUCTURE" MEANS WATER OR SEWER LINES, SIDEWALKS, STREETS, ROADS, TRAFFIC CONTROL AND PUBLIC PARKING IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

Sec. 4. Section 42-5075, Arizona Revised Statutes, is amended to read:
42-5075. Prime contracting classification; exemptions;
definitions

A. The prime contracting classification is comprised of the business of prime contracting and dealership of manufactured buildings. Sales for resale to another dealership of manufactured buildings are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter. The proceeds from alteration and repairs to a used manufactured building are taxable under this section.

B. The tax base for the prime contracting classification is sixty-five per cent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the construction, alteration, repair, addition, subtraction, improvement, movement, wrecking or demolition of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before

1 beginning work under the contract, the prime contractor must have applied for
2 a letter of qualification from the department of revenue.

3 5. The gross proceeds of sales or gross income derived from a contract
4 to construct a qualified environmental technology manufacturing, producing or
5 processing facility, as described in section 41-1514.02, and from subsequent
6 construction and installation contracts that begin within ten years after the
7 start of initial construction. To qualify for this deduction, before
8 beginning work under the contract, the prime contractor must obtain a letter
9 of qualification from the department of revenue. This paragraph shall apply
10 for ten full consecutive calendar or fiscal years after the start of initial
11 construction.

12 6. The gross proceeds of sales or gross income from a contract to
13 provide for one or more of the following actions, or a contract for site
14 preparation, constructing, furnishing or installing machinery, equipment or
15 other tangible personal property, including structures necessary to protect
16 exempt incorporated materials or installed machinery or equipment, and
17 tangible personal property incorporated into the project, to perform one or
18 more of the following actions in response to a release or suspected release
19 of a hazardous substance, pollutant or contaminant from a facility to the
20 environment, unless the release was authorized by a permit issued by a
21 governmental authority:

22 (a) Actions to monitor, assess and evaluate such a release or a
23 suspected release.

24 (b) Excavation, removal and transportation of contaminated soil and
25 its treatment or disposal.

26 (c) Treatment of contaminated soil by vapor extraction, chemical or
27 physical stabilization, soil washing or biological treatment to reduce the
28 concentration, toxicity or mobility of a contaminant.

29 (d) Pumping and treatment or in situ treatment of contaminated
30 groundwater or surface water to reduce the concentration or toxicity of a
31 contaminant.

32 (e) The installation of structures, such as cutoff walls or caps, to
33 contain contaminants present in groundwater or soil and prevent them from
34 reaching a location where they could threaten human health or welfare or the
35 environment.

36 This paragraph does not include asbestos removal or the construction or use
37 of ancillary structures such as maintenance sheds, offices or storage
38 facilities for unattached equipment, pollution control equipment, facilities
39 or other control items required or to be used by a person to prevent or
40 control contamination before it reaches the environment.

41 7. The gross proceeds of sales or gross income that is derived from a
42 contract entered into for the installation, assembly, repair or maintenance
43 of machinery, equipment or other tangible personal property that is deducted
44 from the tax base of the retail classification pursuant to section 42-5061,
45 subsection B, or that is exempt from use tax pursuant to section 42-5159,

1 subsection B, and that does not become a permanent attachment to a building,
2 highway, road, railroad, excavation or manufactured building or other
3 structure, project, development or improvement. If the ownership of the
4 realty is separate from the ownership of the machinery, equipment or tangible
5 personal property, the determination as to permanent attachment shall be made
6 as if the ownership were the same. The deduction provided in this paragraph
7 does not include gross proceeds of sales or gross income from that portion of
8 any contracting activity which consists of the development of, or
9 modification to, real property in order to facilitate the installation,
10 assembly, repair, maintenance or removal of machinery, equipment or other
11 tangible personal property that is deducted from the tax base of the retail
12 classification pursuant to section 42-5061, subsection B or that is exempt
13 from use tax pursuant to section 42-5159, subsection B. For the purposes of
14 this paragraph, "permanent attachment" means at least one of the following:

- 15 (a) To be incorporated into real property.
- 16 (b) To become so affixed to real property that it becomes a part of
17 the real property.
- 18 (c) To be so attached to real property that removal would cause
19 substantial damage to the real property from which it is removed.

20 8. Through December 31, 2009, the gross proceeds of sales or gross
21 income received from a contract for constructing any lake facility
22 development in a commercial enhancement reuse district that is designated
23 pursuant to section 9-499.08 if the prime contractor maintains the following
24 records in a form satisfactory to the department and to the city or town in
25 which the property is located:

- 26 (a) The certificate of qualification of the lake facility development
27 issued by the city or town pursuant to section 9-499.08, subsection D.
- 28 (b) All state and local transaction privilege tax returns for the
29 period of time during which the prime contractor received gross proceeds of
30 sales or gross income from a contract to construct a lake facility
31 development in a designated commercial enhancement reuse district, showing
32 the amount exempted from state and local taxation.
- 33 (c) Any other information that the department considers to be
34 necessary.

35 9. The gross proceeds of sales or gross income attributable to the
36 purchase of machinery, equipment or other tangible personal property that is
37 exempt from or deductible from transaction privilege and use tax under:

- 38 (a) Section 42-5061, subsection A, paragraph 25 or 29.
- 39 (b) Section 42-5061, subsection B.
- 40 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
41 (c), (d), (e), (f), (i), (j) or (l).
- 42 (d) Section 42-5159, subsection B.

1 10. The gross proceeds of sales or gross income received from a
2 contract for the construction of an environmentally controlled facility for
3 the raising of poultry for the production of eggs and the sorting, cooling
4 and packaging of eggs.

5 11. The gross proceeds of sales or gross income that is derived from a
6 contract entered into with a person who is engaged in the commercial
7 production of livestock, livestock products or agricultural, horticultural,
8 viticultural or floricultural crops or products in this state for the
9 construction, alteration, repair, improvement, movement, wrecking or
10 demolition or addition to or subtraction from any building, highway, road,
11 excavation, manufactured building or other structure, project, development or
12 improvement used directly and primarily to prevent, monitor, control or
13 reduce air, water or land pollution.

14 12. The gross proceeds of sales or gross income that is derived from
15 the installation, assembly, repair or maintenance of clean rooms that are
16 deducted from the tax base of the retail classification pursuant to section
17 42-5061, subsection B, paragraph 17.

18 13. For taxable periods beginning from and after June 30, 2001, the
19 gross proceeds of sales or gross income derived from a contract entered into
20 for the construction of a residential apartment housing facility that
21 qualifies for a federal housing subsidy for low income persons over sixty-two
22 years of age and that is owned by a nonprofit charitable organization that
23 has qualified under section 501(c)(3) of the internal revenue code.

24 14. For taxable periods beginning from and after December 31, 1996 and
25 ending before January 1, 2011, the gross proceeds of sales or gross income
26 derived from a contract to provide and install a solar energy device. The
27 contractor shall register with the department as a solar energy contractor.
28 By registering, the contractor acknowledges that it will make its books and
29 records relating to sales of solar energy devices available to the department
30 for examination.

31 15. The gross proceeds of sales or gross income derived from a contract
32 entered into for the construction of a launch site, as defined in 14 Code of
33 Federal Regulations section 401.5.

34 16. The gross proceeds of sales or gross income derived from a contract
35 entered into for the construction of a domestic violence shelter that is
36 owned and operated by a nonprofit charitable organization that has qualified
37 under section 501(c)(3) of the internal revenue code.

38 17. The gross proceeds of sales or gross income derived from contracts
39 to perform postconstruction treatment of real property for termite and
40 general pest control, including wood destroying organisms.

41 18. The gross proceeds of sales or gross income received from contracts
42 entered into before July 1, 2006 for constructing a state university research
43 infrastructure project if the project has been reviewed by the joint
44 committee on capital review before the university enters into the

1 construction contract for the project. For the purposes of this paragraph,
2 "research infrastructure" has the same meaning prescribed in section 15-1670.

3 19. The gross proceeds of sales or gross income received from a
4 contract for the construction of any building, or other structure, project,
5 development or improvement owned by a qualified business under section
6 41-1516 for harvesting or the initial processing of qualifying forest
7 products removed from qualifying projects as defined in section 41-1516 if
8 actual construction begins before January 1, 2010. To qualify for this
9 deduction, the prime contractor must obtain a letter of qualification from
10 the department of commerce before beginning work under the contract.

11 20. The gross proceeds of sales or gross income received from a
12 contract for the construction of any building or other structure associated
13 with motion picture production in this state. To qualify for the deduction,
14 at the time the contract is entered into the motion picture production
15 company must present to the prime contractor its certificate that is issued
16 pursuant to section 42-5009, subsection H and that establishes its
17 qualification for the deduction.

18 21. Any amount of the gross proceeds of sales or gross income from a
19 contract that constitutes development or impact fees paid to the state or a
20 local government to offset governmental costs of providing public
21 infrastructure, public safety and other public services to a development.

22 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
23 of this section is subject to the following provisions:

24 1. A prime contractor may establish entitlement to the deduction by
25 both:

26 (a) Marking the invoice for the transaction to indicate that the gross
27 proceeds of sales or gross income derived from the transaction was deducted
28 from the base.

29 (b) Obtaining a certificate executed by the purchaser indicating the
30 name and address of the purchaser, the precise nature of the business of the
31 purchaser, the purpose for which the purchase was made, the necessary facts
32 to establish the deductibility of the property under section 42-5061,
33 subsection B, and a certification that the person executing the certificate
34 is authorized to do so on behalf of the purchaser. The certificate may be
35 disregarded if the prime contractor has reason to believe that the
36 information contained in the certificate is not accurate or complete.

37 2. A person who does not comply with paragraph 1 of this subsection
38 may establish entitlement to the deduction by presenting facts necessary to
39 support the entitlement, but the burden of proof is on that person.

40 3. The department may prescribe a form for the certificate described
41 in paragraph 1, subdivision (b) of this subsection. The department may also
42 adopt rules that describe the transactions with respect to which a person is
43 not entitled to rely solely on the information contained in the certificate
44 provided in paragraph 1, subdivision (b) of this subsection but must instead

1 obtain such additional information as required in order to be entitled to the
2 deduction.

3 4. If a prime contractor is entitled to a deduction by complying with
4 paragraph 1 of this subsection, the department may require the purchaser who
5 caused the execution of the certificate to establish the accuracy and
6 completeness of the information required to be contained in the certificate
7 which would entitle the prime contractor to the deduction. If the purchaser
8 cannot establish the accuracy and completeness of the information, the
9 purchaser is liable in an amount equal to any tax, penalty and interest which
10 the prime contractor would have been required to pay under article 1 of this
11 chapter if the prime contractor had not complied with paragraph 1 of this
12 subsection. Payment of the amount under this paragraph exempts the purchaser
13 from liability for any tax imposed under article 4 of this chapter. The
14 amount shall be treated as a transaction privilege tax to the purchaser and
15 as tax revenues collected from the prime contractor in order to designate the
16 distribution base for purposes of section 42-5029.

17 D. Subcontractors or others who perform services in respect to any
18 improvement, building, highway, road, railroad, excavation, manufactured
19 building or other structure, project, development or improvement are not
20 subject to tax if they can demonstrate that the job was within the control of
21 a prime contractor or contractors or a dealership of manufactured buildings
22 and that the prime contractor or dealership is liable for the tax on the
23 gross income, gross proceeds of sales or gross receipts attributable to the
24 job and from which the subcontractors or others were paid.

25 E. Amounts received by a contractor for a project are excluded from
26 the contractor's gross proceeds of sales or gross income derived from the
27 business if the person who hired the contractor executes and provides a
28 certificate to the contractor stating that the person providing the
29 certificate is a prime contractor and is liable for the tax under article 1
30 of this chapter. The department shall prescribe the form of the certificate.
31 If the contractor has reason to believe that the information contained on the
32 certificate is erroneous or incomplete, the department may disregard the
33 certificate. If the person who provides the certificate is not liable for
34 the tax as a prime contractor, that person is nevertheless deemed to be the
35 prime contractor in lieu of the contractor and is subject to the tax under
36 this section on the gross receipts or gross proceeds received by the
37 contractor.

38 F. Every person engaging or continuing in this state in the business
39 of prime contracting or dealership of manufactured buildings shall present to
40 the purchaser of such prime contracting or manufactured building a written
41 receipt of the gross income or gross proceeds of sales from such activity and
42 shall separately state the taxes to be paid pursuant to this section.

43 G. For the purposes of section 42-5032.01, the department shall
44 separately account for revenues collected under the prime contracting
45 classification from any prime contractor engaged in the preparation or

1 construction of a multipurpose facility, and related infrastructure, that is
2 owned, operated or leased by the tourism and sports authority pursuant to
3 title 5, chapter 8.

4 H. FOR THE PURPOSES OF SECTION 42-5032.02, THROUGH DECEMBER 31, 2013,
5 THE DEPARTMENT SHALL SEPARATELY ACCOUNT FOR REVENUES REPORTED AND COLLECTED
6 UNDER THE PRIME CONTRACTING CLASSIFICATION FROM ANY PRIME CONTRACTOR ENGAGED
7 IN THE CONSTRUCTION OF ANY BUILDINGS THAT ARE FOR THE BENEFIT OF A UNIVERSITY
8 THAT IS UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

9 ~~H.~~ I. The gross proceeds of sales or gross income derived from a
10 contract for lawn maintenance services are not subject to tax under this
11 section if the contract does not include landscaping activities. Lawn
12 maintenance service is a service pursuant to section 42-5061, subsection A,
13 paragraph 1, and includes lawn mowing and edging, weeding, repairing
14 sprinkler heads or drip irrigation heads, seasonal replacement of flowers,
15 refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris
16 collection and removal, tree or shrub pruning or clipping, garden and gravel
17 raking and applying pesticides, as defined in section 3-361, and fertilizer
18 materials, as defined in section 3-262.

19 ~~I.~~ J. The gross proceeds of sales or gross income derived from
20 landscaping activities are subject to tax under this section. Landscaping
21 includes installing lawns, grading or leveling ground, installing gravel or
22 boulders, planting trees and other plants, felling trees, removing or
23 mulching tree stumps, removing other imbedded plants, building or modifying
24 irrigation berms, repairing sprinkler or watering systems, installing
25 railroad ties and installing underground sprinkler or watering systems.

26 ~~J.~~ K. The portion of gross proceeds of sales or gross income
27 attributable to the actual direct costs of providing architectural or
28 engineering services that are incorporated in a contract is not subject to
29 tax under this section. For the purposes of this subsection, "direct costs"
30 means the portion of the actual costs that are directly expended in providing
31 architectural or engineering services.

32 ~~K.~~ L. Operating a landfill or a solid waste disposal facility is not
33 subject to taxation under this section, including filling, compacting and
34 creating vehicle access to and from cell sites within the landfill.
35 Constructing roads to a landfill or solid waste disposal facility and
36 constructing cells within a landfill or solid waste disposal facility may be
37 deemed prime contracting under this section.

38 ~~L.~~ M. The following apply to manufactured buildings:

39 1. For sales in this state where the dealership of manufactured
40 buildings contracts to deliver the building to a setup site or to perform the
41 setup in this state, the taxable situs is the setup site.

42 2. For sales in this state where the dealership of manufactured
43 buildings does not contract to deliver the building to a setup site or does
44 not perform the setup, the taxable situs is the location of the dealership
45 where the building is delivered to the buyer.

1 3. For sales in this state where the dealership of manufactured
2 buildings contracts to deliver the building to a setup site that is outside
3 this state, the situs is outside this state and the transaction is excluded
4 from tax.

5 ~~M-~~ N. Notwithstanding subsection ~~N-~~ O, paragraph 8 of this section, a
6 person owning real property who enters into a contract for sale of the real
7 property, who is responsible to the new owner of the property for
8 modifications made to the property in the period subsequent to the transfer
9 of title and who receives a consideration for the modifications is considered
10 a prime contractor solely for purposes of taxing the gross proceeds of sale
11 or gross income received for the modifications made subsequent to the
12 transfer of title. The original owner's gross proceeds of sale or gross
13 income received for the modifications shall be determined according to the
14 following methodology:

15 1. If any part of the contract for sale of the property specifies
16 amounts to be paid to the original owner for the modifications to be made in
17 the period subsequent to the transfer of title, the amounts are included in
18 the original owner's gross proceeds of sale or gross income under this
19 section. Proceeds from the sale of the property THAT ARE received after
20 transfer of title AND that are unrelated to the modifications made subsequent
21 to the transfer of title ~~will~~ ARE not be considered gross proceeds of sale or
22 gross income from the modifications.

23 2. If the original owner enters into an agreement separate from the
24 contract for sale of the real property providing for amounts to be paid to
25 the original owner for the modifications to be made in the period subsequent
26 to the transfer of title to the property, the amounts are included in the
27 original owner's gross proceeds of sale or gross income received for the
28 modifications made subsequent to the transfer of title.

29 3. If the original owner is responsible to the new owner for
30 modifications made to the property in the period subsequent to the transfer
31 of title and derives any gross proceeds of sale or gross income from the
32 project subsequent to the transfer of title other than a delayed disbursement
33 from escrow unrelated to the modifications, it is presumed that the amounts
34 are received for the modifications made subsequent to the transfer of title
35 unless the contrary is established by the owner through its books, records
36 and papers kept in the regular course of business.

37 4. The tax base of the original owner is computed in the same manner
38 as a prime contractor under this section.

39 ~~M-~~ O. For the purposes of this section:

40 1. "Contracting" means engaging in business as a contractor.

41 2. "Contractor" is synonymous with the term "builder" and means any
42 person or organization that undertakes to or offers to undertake to, or
43 purports to have the capacity to undertake to, or submits a bid to, or does
44 personally or by or through others, modify any building, highway, road,
45 railroad, excavation, manufactured building or other structure, project,

1 development or improvement, or to do any part of such a project, including
2 the erection of scaffolding or other structure or works in connection with
3 such a project, and includes subcontractors and specialty contractors. For
4 all purposes of taxation or deduction, this definition shall govern without
5 regard to whether or not such contractor is acting in fulfillment of a
6 contract.

7 3. "Dealership of manufactured buildings" means a dealer who either:

8 (a) Is licensed pursuant to title 41, chapter 16 and who sells
9 manufactured buildings to the final consumer.

10 (b) Supervises, performs or coordinates the excavation and completion
11 of site improvements, setup or moving of a manufactured building including
12 the contracting, if any, with any subcontractor or specialty contractor for
13 the completion of the contract.

14 4. "Manufactured building" means a manufactured home, mobile home or
15 factory-built building, as defined in section 41-2142.

16 5. "Modification" means construction, alteration, repair, addition,
17 subtraction, improvement, movement, wreckage or demolition.

18 6. "Modify" means to construct, alter, repair, add to, subtract from,
19 improve, move, wreck or demolish.

20 7. "Prime contracting" means engaging in business as a prime
21 contractor.

22 8. "Prime contractor" means a contractor who supervises, performs or
23 coordinates the modification of any building, highway, road, railroad,
24 excavation, manufactured building or other structure, project, development or
25 improvement including the contracting, if any, with any subcontractors or
26 specialty contractors and who is responsible for the completion of the
27 contract. Except as provided in subsections E and M- N of this section, a
28 person who owns real property, who engages one or more contractors to modify
29 that real property and who does not itself modify that real property is not a
30 prime contractor within the meaning of this paragraph regardless of the
31 existence of a contract for sale or the subsequent sale of that real
32 property.

33 9. "Sale of a used manufactured building" does not include a lease of
34 a used manufactured building.

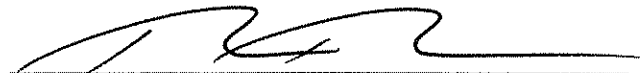
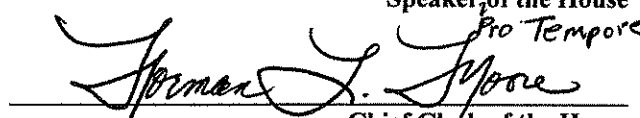
35 Sec. 5. Delayed repeal

36 Section 42-5032.02, Arizona Revised Statutes, as added by this act, is
37 repealed from and after December 31, 2013.

ON RECONSIDERATION



Passed the House June 26, 2008,
by the following vote: 55 Ayes,

5 Nays, 0 Not Voting


Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate April 3, 2008,
by the following vote: 16 Ayes,

13 Nays, 1 Not Voting


President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
27th day of June, 2008,

at 12:49 o'clock P. M.


Secretary to the Governor

Approved this _____ day of

_____, 20____,
VETO
at _____ o'clock _____ M.

Governor of Arizona

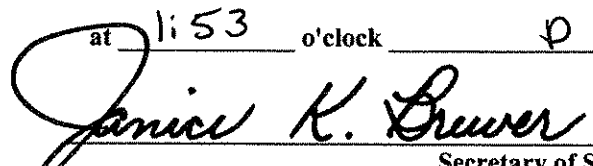
S.B. 1484

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

Veto

This ~~Bill~~ was received by the Secretary of State
this 7th day of July, 2008,

at 1:53 o'clock P. M.


Secretary of State